

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of APRIL N. WALTER and U.S. POSTAL SERVICE,
POST OFFICE, Houston, TX

*Docket No. 01-1180; Submitted on the Record;
Issued December 28, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's claim for compensation from February 12 to 20, 2000.

On September 2, 1999 appellant, then a 35-year-old mailhandler, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that she sustained contusions on the left side of her face in the course of her job duties. The Office eventually accepted the claim for contusion to the left side of the face.

Appellant returned to work in a light-duty capacity on November 4, 1999.

A February 7, 2000 work status report was received by the Office on February 19, 2000. The report, which contained illegible portions and an illegible signature, specified limited duty and signified that appellant could return to full light duty on February 21, 2000.

On April 6, 2000 appellant filled out a claim (Form CA-7) for compensation for the period February 7 to 21, 2000.

By letter dated April 20, 2000, the Office advised appellant that additional medical evidence was needed. Appellant was allotted 30 days to submit such evidence.

In a May 25, 2000 decision, the Office denied appellant's claim for compensation from February 12 to 20, 2000¹ as the medical evidence did not support that appellant was totally disabled due to her September 2, 1999 work-related injury.

On August 9, 2000 appellant requested reconsideration and enclosed additional medical evidence.

¹ Appellant's claim was for February 7 to 21, 2000 but it appears that the Office changed this to February 12, 2000 as her doctor's note stated February 12 to 21, 2000.

In an undated report, Dr. Choung Nguyen, a Board-certified family practitioner, stated that appellant was initially seen on September 2, 1999 for facial injuries which were incurred while on the job. She noted continuing follow-up visits and a last office visit of February 7, 2000. Dr. Nguyen reported that appellant was totally disabled and unable to work from February 12 to 21, 2000.

In an October 23, 2000 merit decision, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision.

In an October 5, 1999 magnetic resonance image (MRI) of the brain, Dr. Allen C. Chu, a radiologist, noted that the ventricles were normal in size with no evidence of mass effect or midline shift. He stated that there were no significant focal areas of abnormal signal intensity noted intracranially and no abnormal extra-axial fluid collections were identified. Dr. Chu stated that there were no areas of abnormal enhancement and the brain stem and midline structures were unremarkable. He further noted that the cerebellar tonsils were low in position and extended approximately to the level of the foramen magnum, which were felt to be within normal limits.

On December 16, 2000 the Office received a request for reconsideration from appellant along with additional medical evidence.

In a November 14, 2000 report, Dr. Nguyen noted that appellant was initially seen on September 2, 1999 for a work-related injury when a piece of equipment fell and hit her face. She noted that appellant was seen regularly until her last office visit on February 7, 2000. Dr. Nguyen stated that appellant had some swelling in her face which was sore and tender due to the injury. Dr. Nguyen advised that appellant remain home until February 21, 2000.

In a February 8, 2001 merit decision, the Office denied modification, as the evidence was insufficient to warrant modification.

The Board finds that the Office properly denied appellant's claim for compensation from February 12 to 20, 2000.

A claimant seeking benefits under the Federal Employees' Compensation Act² has the burden of proof to establish the essential elements of her claim by the weight of the evidence,³ including that she sustained an injury in the performance of duty and that any specific condition or disability for which she claims compensation is causally related to that employment injury.⁴

The Office accepted that appellant sustained an injury in the performance of duty on September 2, 1999. Appellant must, therefore establish that the accepted employment injury caused disability for the periods claimed. "Disability" means the incapacity, because of

² 5 U.S.C. §§ 8101-8193.

³ *Nathaniel Milton*, 37 ECAB 7112 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and the cases cited therein.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

employment injury, to earn the wages that the employee was receiving at the time of injury.⁵ When the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in her employment, she is entitled to continuation of pay or monetary compensation for any loss of wage-earning capacity resulting from such incapacity.⁶

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a reasoned medical opinion that supports a causal connection between the claimed disability and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury and must explain medically how the claimed disability is related to the injury.⁷

Regarding appellant's claim for compensation for disability from February 12 to 20, 2000, the medical evidence in this case contains no medical opinion to support a disability. The evidence consists of an unsigned and illegible February 7, 2000 report, which specified limited duty and signified that appellant, could return to light duty on February 21, 2000. The Board has consistently held that unsigned medical reports are of no probative value.⁸ Additionally, the Board has held that any medical evidence which the Office relies upon to resolve an issue must be in writing and signed by a qualified physician.⁹

Appellant also submitted two reports from Dr. Nguyen. In the first report, which was undated, she merely stated that she was treating appellant since September 2, 1999 for facial injuries, which she received on the job. Dr. Nguyen further stated that she last saw her on February 7, 2000 and that she was totally disabled and unable to work from February 12 to 21, 2000. She did not indicate that appellant was disabled due to her work injury. In Dr. Nguyen's November 14, 2000 report, she essentially repeated the contents of her earlier report, and added that appellant's face was sore and tender due to the injury. She did not provide any indication of causal relationship to show how appellant's disability was related to her accepted employment injury. For instance, Dr. Nguyen did not explain how appellant's face could be sore and tender due to the injury, almost five months after the injury when no previous mention of swelling was made in any of the reports.

Appellant further submitted a diagnostic test comprised of an October 5, 1999 MRI of the brain, however, this report was of limited probative value, as it did not provide any discussion of appellant's disability or causal relation. In fact, this report showed normal findings.

⁵ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazer V. Nichol*, 37 ECAB 28 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5.

⁶ *Bobby W. Hornbuckle*, 38 ECAB 626 (1987); 20 C.F.R. § 10.201.

⁷ *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁸ *See Merton J. Sills*, 39 ECAB 572 (1988).

⁹ *James A. Long*, 40 ECAB 538 (1989); *Walter A. Fundiger*, 37 ECAB 200 (1985).

Because the medical evidence fails to show that appellant was disabled for the dates claimed due to the work-related injury, appellant is not entitled to monetary compensation for those dates.

The decisions of the Office of Workers' Compensation Programs dated February 8, 2001, October 23 and May 25, 2000 are hereby affirmed.

Dated, Washington, DC
December 28, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member